

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LAYRITE CONCRETE PRODUCTS
OF SEATTLE, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 799

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50 civil penalty for alleged smoke emissions in violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 7th day of July, 1975, at Seattle, Washington; and appellant, Layrite Concrete Products of Seattle, Inc., appearing through its president, Verne Erse and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board member present at the hearing being Chris Smith and the Board having considered the sworn testimony, exhibits, records and files herein

1 and the contentions of the parties and having entered on the 9th day
2 of July, 1975, its proposed Findings of Fact, Conclusions of Law and
3 Order, and the Board having served said proposed Findings, Conclusions
4 and Order upon all parties herein by certified mail, return receipt
5 requested and twenty days having elapsed from said service; and

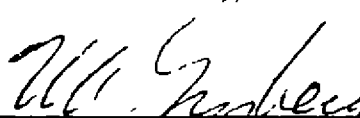
6 The Board having received no exceptions to said proposed
7 Findings, Conclusions and Order; and the Board being fully advised
8 in the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 9th day
11 of July, 1975, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 11th day of August, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 
17 _____
18 CHRIS SMITH, Chairman

19 
20 _____
21 W. A. GISSBERG, Member

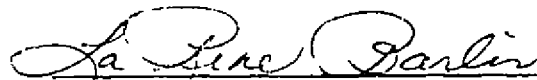
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND
ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 11th day of August, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Verne Frese, President
Layrite Concrete Products
of Seattle, Inc.
P. O. Box 80426
Seattle, Washington 98108

Mr. Keith D. McGoffin
Burkey, Marsico, Rovai, McGoffin,
Turner and Mason
P. O. Box 5217
Tacoma, Washington 98405



LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
LAYRITE CONCRETE PRODUCTS)
OF SEATTLE, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

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FINDINGS OF FACT,
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This matter, the appeal of a \$50 civil penalty for alleged smoke emissions in violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith, Chairman, at a formal hearing in Seattle on July 7, 1975. David Akana, Hearing Examiner, presided.

Appellant was represented by Verne Frese, its President; respondent was represented by and through its attorney, Keith D. McGoffin. Jennie Roland, Olympia court reporter, recorded the testimony.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were admitted.

2 Having heard the testimony, having examined the exhibits, and having
3 considered the contentions of the parties, the Pollution Control Hearings
4 Board makes the following

5 FINDINGS OF FACT

6 I.

7 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d Ex.
8 Sess., has filed with this Board a certified copy of its Regulation I
9 containing respondent's regulations and amendments thereto.

10 II.

11 Section 9.03 of respondent's Regulation I provides that it shall be
12 unlawful to cause or allow the emission of an air contaminant for more
13 than three minutes in any one hour, which emission is darker than No. 2
14 (40 percent density) on the Ringelmann Chart. Section 3.29 provides for
15 a civil penalty of up to \$250 per day for each violation of Regulation I.
16 Section 9.16 provides for certain exceptions for violations of Regulation I

17 III.

18 Appellant operates a concrete products plant located at 7265 East
19 Marginal Way South in Seattle. At this plant, appellant maintains and
20 operates a boiler for use in its business.

21 IV.

22 On January 6, 1975, while on patrol, respondent's inspector observed
23 black smoke emitting from appellant's boiler stack. The inspector took a
24 reading of the smoke emissions for a period of six consecutive minutes.
25 During such period, the density was recorded as 2-3/4 to 3-1/2 on the
Ringelmann Chart. Notice of Violation No. 10342 was issued to appellant

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 from which Notice of Civil Penalty No. 1896, assessing a fine of \$50,
2 followed. This penalty is the subject matter of this appeal.

3 V.

4 Appellant's plant normally uses natural gas. On the day of the
5 violation, this source of fuel was interrupted with only one hour's notice
6 to appellant. Normally, appellant was given about five hour's notice of
7 the interruption. To continue production, appellant ordered fuel oil.
8 The oil, which was delivered cold, was immediately substituted. This
9 fuel conversion resulted in the smoke emissions observed by respondent's
10 inspector.

11 Appellant has subsequently modified its equipment to guard against
12 repeated occurrences of this nature. An electric oil heater and an oil
13 filter were installed at a cost of about \$530.

14 VI.

15 Appellant, through its then supervisor, had knowledge of respondent's
16 reporting procedures providing for exemptions from penalties under
17 Section 9.16. Appellant did not avail itself of this provision.

18 VII.

19 Any Conclusion of Law which should be deemed a Finding of Fact is
20 hereby adopted as such.

21 From these Findings the Board comes to these

22 CONCLUSIONS OF LAW

23 I.

24 On January 6, 1975 appellant violated Section 9.03 of respondent's
25 Regulation I. Because appellant did not report its problem to respondent
26 as provided for in Section 9.16, it cannot avail itself of this section

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

II.

Appellant has taken reasonable steps to prevent the reoccurrence of the same violation.

III.

The penalty assessed is reasonable.

IV.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Pollution Control Hearings Board enters this

ORDER

The appeal is denied, but the \$50 penalty is suspended pending no similar violation of Regulation I by appellant for a period of six months from the date this Order becomes final.

DATED this 9th day of July, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman